

D9H7SEEF

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

12 CR 505 (GBD)

5 SATNARINE SEEBACHAN,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 September 17, 2013  
1:00 p.m.

10 Before:

11 HON. GEORGE B. DANIELS,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 CARRIE H. COHEN

REBECCA MONCK RICIGLIANO

Assistant United States Attorneys

18 ANTHONY L. RICCO

19 Attorney for Defendant

D9H7SEEF

1 (A jury of 12 and two alternates was selected and  
2 sworn)

3 THE COURT: Be seated for a couple minutes, ladies and  
4 gentlemen. Before I send you home, I will give you the  
5 preliminary instructions before we adjourn.

6 Members of the jury, at this point I'm required before  
7 we start, required by law to instruct you generally concerning  
8 your basic function, duties and certain rules which apply to  
9 every jury, so that you will be better able to assess and weigh  
10 the evidence as it's presented and reach a proper verdict.

11 Now, the trial has commenced with the selection of the  
12 jury. The next step in the trial tomorrow morning will be  
13 opening statement by the government to outline for you what the  
14 prosecution intends to prove by way of evidence to be presented  
15 in the case.

16 After the government's attorney makes her opening  
17 statement, the defendant's attorney, if he desires, may also  
18 but is not required to make an opening statement.

19 Now, what counsel for either side says in an opening  
20 statement is not evidence. You may consider the opening  
21 statement as a preview of what each side intends to prove by  
22 way of evidence in the case.

23 After the opening statement or statements, the  
24 assistant United States attorneys will present one or more  
25 witnesses who will be questioned by them. Now, this is called

D9H7SEEF

1 direct examination.

2 After the assistant United States attorney completes  
3 her questioning of the witness, defense counsel will be given  
4 an opportunity to question that witness. This is called  
5 cross-examination.

6 After the government has conclude the calling of its  
7 witnesses and the introduction of any exhibits which are  
8 admissible into evidence, the defendant may -- but is not  
9 required -- to offer evidence in his own defense.

10 After both sides rest, the government's attorney will  
11 make a closing argument, followed by the closing argument of  
12 the defendant's attorney. And the government's attorney will  
13 then have a brief rebuttal in response. Then I will instruct  
14 you on the law, and you will retire to deliberate for the  
15 purpose of reaching a verdict.

16 This is a general outline of the trial procedure. I  
17 ask you to listen carefully. You don't need to take notes. We  
18 have a court reporter who will take all the testimony down. If  
19 you want any testimony read back during your deliberations, we  
20 will bring you back in open court, and the court reporter will  
21 read back those portions of the testimony.

22 Now, the evidence consists of testimony of witnesses  
23 under oath and exhibits which are admitted into evidence, plus  
24 any stipulations agreed upon by the attorneys. Questions in  
25 and of themselves are not evidence, therefore, you cannot infer

D9H7SEEF

1 any fact from asking the question. It's the answer coupled  
2 with the question that constitutes evidence. For example, if a  
3 witness was asked a question "Don't you own an automobile?" and  
4 the witness replies "No," you may not infer from the mere  
5 asking of the question that the witness does own an automobile.

6 Now, during the court of the trial, the assistant  
7 United States attorney, or defense counsel, may object to a  
8 question or an answer on the ground that it is somehow legally  
9 improper or inadmissible. If I sustain the objection, this  
10 means I believe that the question or the answer was in some way  
11 improper. If an answer has already been given, I will instruct  
12 you to disregard it and, therefore, the answer is no longer  
13 evidence in the case. If I overrule the objection, then it  
14 means that the question is proper, and I will permit it to be  
15 answered, or, if already answered, I will permit the answer to  
16 remain as evidence in the case.

17 Now, please, do not resent the fact that an attorney  
18 makes objections. This is their duty, and do not hold it  
19 against them if I rule against either side.

20 As I will explain to you in detail in my instructions  
21 at the end of the case, as jurors in this case you are the sole  
22 judges of the facts, and I am the sole judge of the law, and  
23 you must accept the law as I give it to you, without hesitation  
24 or reservation, even if you privately disagree with me. You  
25 must keep an open mind.

D9H7SEEF

1           Throughout the trial you must not converse among  
2 yourselves or with anyone else upon any subject connected with  
3 the trial. You must neither offer nor express an opinion about  
4 the guilt or innocence of the defendant, or reach any  
5 conclusion about what the verdict should be until I finally  
6 give the case to you.

7           You must not read or listen to any accounts or  
8 discussions of the case in the event it's reported by  
9 newspapers or other news media.

10          You must not visit or view any premises or place where  
11 the offense charged was allegedly committed, or any other place  
12 or premises involved in the case.

13          You must not do any research on your own, or  
14 investigation about the case on your own.

15          You must decide this case solely on the evidence  
16 presented at this trial.

17          You must speak to no one about the case until the  
18 trial is completely ended, and you must promptly report to the  
19 court any incident within your knowledge involving an attempt  
20 by any person to speak with any member of the jury about the  
21 case.

22          During the trial you should not speak to any of the  
23 parties or lawyers involved in this case, nor any individuals  
24 associated with it. They are instructed not to speak with you,  
25 so don't consider it rude if they see you outside of this

D9H7SEEF

1 courtroom and they don't acknowledge your presence. Obviously,  
2 if someone were to see you speaking to one of the parties  
3 involved in the case, they might draw an improper inference  
4 even though it might be a perfectly innocent conversation  
5 unrelated to the case.

6 Now, ladies and gentlemen, as I say, tomorrow morning  
7 the next step will be we will have the opening statement by the  
8 government and an opening statement by the defense if they wish  
9 to make an opening statement, and we will proceed with the  
10 witnesses, and we will proceed every day until we finish the  
11 case. I think we are on schedule, and I am going to make sure  
12 we stay on schedule or get ahead of schedule.

13 Tomorrow morning I'm going to ask you to be in the  
14 jury room. My law clerk is going to show you where the jury  
15 room is. As you come in, just go straight to the jury room.  
16 When we know all 14 of you are there we can start. We are a  
17 team; we can't start until everyone arrives. I'm going to ask  
18 you to be there before tomorrow before 9:30. I want to get a  
19 good start the first day and see how far we are going. If it  
20 looks like we have a little extra time, we can start a little  
21 later in the days beyond that, but I want to keep us on  
22 schedule or get ahead of schedule before I start being more  
23 flexible with the time.

24 So, I will have my law clerk take you into the jury  
25 room now, give you information about how to get in contact with

D9H7SEEF

1 us if there is a problem, get information from you about how to  
2 contact you if you are not here and we need to try to locate  
3 you. So, have a good evening; don't discuss the case. Keep an  
4 open mind. I will see you tomorrow morning at 9:30, and we  
5 will be prepared to begin the case at that time.

6 (Continued on next page)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

D9H7SEEF

(Jury not present)

THE COURT: After we talked about the motions in limine, the only logistical thing, Mr. Ricco, you should think about first of all is there is still a possibility that depending how this case develops the government -- even though I restrict them with regard to the opening -- the government be allowed to present -- I don't know the extent of the bank records and charts and that sort of thing.

So, I think you should discuss with the government whether or not your position is that you want me to give them the leeway to present that right up front if they want to present that in their case in chief, or you want to wait until a rebuttal case.

MR. RICCO: Well, I have thought about that, and generally I would tell the government in advance that that door is going to be open so you might as well go ahead, but that's not the case here.

The defendant's defense in this case is finite. His bottom line position is that that conversation where he said he would do this man favors did not happen. And we believe that 99 percent of the facts in this case are not in dispute. There is not going to be any dispute that the work was done. There is not going to be any dispute that the materials were bought and delivered. All of that happened. What is in dispute in this case is whether or not Mr. Seebachan said to Mr. Papadatis



D9H7SEEF

1 that I'm going to do a favor for you, and how that happened.  
2 So, we are going to spend a lot of time with their witness  
3 discussing that part of his testimony.

4 And as a second point, your Honor, we ultimately  
5 believe that the source of the defendant's money was irrelevant  
6 to the issues at this trial. We only responded to what the  
7 government put out there. I believe it makes no difference.  
8 The question is whether or not he had this cash, which he did.  
9 I don't think the government is saying he didn't have it. He  
10 did have it. The government witnesses are not going to dispute  
11 that their witnesses weren't paid in cash. We are not going to  
12 challenge that. The witness is going to say he got cash, and  
13 we are just going to say how much, when and where. So, that's  
14 it.

15 And the defendant as we sit here today intends to  
16 testify, and he is going to try to stay as focused as possible  
17 about what the issue is here. So, that's pretty much where we  
18 are.

19 But, your Honor, had I believed that we would cross  
20 that bridge, I would just say to the government that's going to  
21 happen and we might as well be right up front and deal with it.  
22 But I don't think that's the case here, and I would say --  
23 well, it would have to depend on something that was done during  
24 our case.

25 But, Judge, I also don't believe that

D9H7SEEF

1 cross-examination opens a door, that the question on cross then  
2 opens the door. Because the government if they ask the  
3 defendant, well, where did you get the money from, he's got to  
4 answer the question. If he doesn't answer the question, then  
5 they get to bring out his proffer notes that he said he got the  
6 money from Jamaica. And then that doesn't open the door to the  
7 bank records, the this, the that and everything, because he has  
8 to answer the question posed honestly.

9 THE COURT: Well, that's not the only thing that opens  
10 the door though, so --

11 MR. RICCO: That's correct, Judge.

12 THE COURT: So, the reason I want to have you think  
13 about that specifically is because if at some point in time  
14 either the opening statement and/or your cross-examination of  
15 their witnesses opens the door to that, then I'm going to let  
16 the government go ahead, and I don't want you to be surprised.  
17 The government has made the application that's what they want  
18 to do, it's their position that they should still be able to do  
19 that on their case in chief. They say they have not only the  
20 bank records but they have a chart and a witnesses that will  
21 talk about the bank record. Whether or not if we do that we  
22 are going to spend that hour doing it on their case in chief or  
23 hours more doing that after your case is another question, if  
24 it's necessary at all.

25 But I will see how the case unfolds, and I will let

D9H7SEEF

1       them renew their application any time they think the  
2       circumstances are different from what I anticipated at this  
3       trial.

4               MR. RICCO: Judge, I think that's fair. I have  
5       thought about other areas where I think the various issues  
6       raised by the government would be open.

7               For example, every single witness that the government  
8       is calling has a long-term professional, positive relationship  
9       with the defendant, and so there is a great sort of urge to  
10      then cross that witness, well, you've always had excellent  
11      working blah, blah, blah, and we just have to be restrained not  
12      to do that.

13              But certainly these witnesses have known the  
14      defendant. He has been there 20 years, and so he has worked  
15      with them in meetings, in board meetings. There has been a  
16      great deal of work, professional work, and he has risen during  
17      that time period. So, a cross that you normally would like to  
18      pursue, we just have to make a decision as to whether or not we  
19      would do that and what doors it would open. So, we are  
20      thinking it through, Judge.

21              MS. COHEN: Your Honor, just so our opening doesn't in  
22      any way go against what your Honor's ruling, I think we would  
23      be permitted in opening to tell the jury that they will not see  
24      any evidence of any checks written to the contractor for the  
25      work.

D9H7SEEF

1 THE COURT: That's fine.

2 MS. COHEN: I mean that has to be -- OK.

3 THE COURT: Sure.

4 MR. RICCO: Judge, I agree, because there are none. I  
5 mean the witness is going to say he was paid in cash, and the  
6 defendant is going to say he paid in cash. There are no  
7 checks.

8 THE COURT: Look, as long as you don't reference the  
9 specific evidence and the content of the bank record, you can  
10 say pretty much what you want to say about whether or not he  
11 could afford it or couldn't afford it, or whether he had the  
12 money or didn't have the money. You know, you have to be  
13 careful about that.

14 MS. COHEN: Right. I was going to say, if we open on  
15 he couldn't afford it, he didn't have the money --

16 THE COURT: They may want the bank records in.

17 MS. COHEN: Right. That puts us in a box because then  
18 we can't deliver on what we opened on. That's why I wanted to  
19 make sure what I was going to be allowed.

20 THE COURT: I am just trying to give you the  
21 parameters and make sure that whatever -- these are tactical  
22 decisions, so I want you to make tactical decisions based on as  
23 much information I give you as to my approach to this so there  
24 will be no surprises, and if that's the way you want to go,  
25 fine, that's the way you want to go, but we will see how the

D9H7SEEF

1 case unfolds.

2 But Mr. Ricco may be correct that the issue for the  
3 jury may narrow very quickly, you know, as to whether or not he  
4 in fact did -- one, whether he received any work that he  
5 otherwise should have paid for and he got it for nothing, and,  
6 two, he did so in exchange for his indication, promise, express  
7 or otherwise, that they would get a break on their contracting  
8 work for the not-for-profit if they did him the favor by not  
9 charging him everything they needed to charge him.

10 If the issue is beyond that, or needs to be proven  
11 circumstantially rather than directly, we will see. But, as I  
12 said, you know, there is usually pretty much direct evidence of  
13 that, and it doesn't need a whole lot of circumstantial  
14 evidence, depending on the nature of the attack on the  
15 witnesses and what is being attacked.

16 All right.

17 MS. COHEN: Just, your Honor, your scheduling day,  
18 when you take a break, lunch, just so we can schedule our  
19 witnesses.

20 THE COURT: Tomorrow, if we start at 9:30, we are  
21 probably going to take a break sometime between 10:30 and 11,  
22 because I have the other case, and I want to give them some  
23 time. We usually take a midmorning break and go until one  
24 o'clock or just before one o'clock, take about an hour, hour  
25 and ten minutes for lunch, usually about an hour and ten

D9H7SEEF

1 minutes, come back, take a midafternoon break, and let the jury  
2 go sometime before 5 o'clock, unless we have five or ten more  
3 minutes just to finish with a witness so the witness doesn't  
4 have to come back.

5 OK. All right. anything else?

6 MR. RICCO: No, sir. Thank you.

7 THE COURT: Then I will see you all tomorrow morning.  
8 I will see you at 9:25 in case there is anything else we need  
9 to do before the jury comes in.

10 (Adjourned to September 18, 2013 at 9:30 a.m.)  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25